

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

JAMES SURGENOR,	:	Case No. 1:16-cv-1179
Plaintiff,	:	
	:	Judge Timothy S. Black
vs.	:	
	:	Magistrate Judge Karen L. Litkovitz
GARY MOORE, <i>et al.</i> ,	:	
Defendants.	:	

**DECISION AND ENTRY  
ADOPTING THE REPORT AND RECOMMENDATION (Doc. 74); AND  
ORDERING PLAINTIFF TO FILE NOTICE  
CORRECTING OR CONFIRMING HIS ADDRESS**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and, on February 8, 2019, submitted a Report and Recommendation (Doc. 74). No objections were filed.<sup>1</sup>

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court finds that the Report and Recommendation should be and is hereby adopted in its entirety.

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<sup>1</sup> The Clerk's Office timely served, by U.S. Mail, a copy of the Report and Recommendation on Plaintiff Surgenor, who appears in this case *pro se*. By all appearances, the document was delivered successfully. Subsequently, however, the Clerk's Office's attempt to serve the Calendar Order (Doc. 76) was unsuccessful and the mail was returned as undeliverable (Doc. 78). Regardless, the Court finds no basis to conclude that Plaintiff Surgenor did not receive the Report and Recommendation. Moreover, it is Plaintiff's responsibility to keep the Court apprised of his current address and contact information. And Plaintiff has amply demonstrated his awareness of this fact and ability to comply, as evidenced by the six prior occasions on which Plaintiff has given notice regarding a new address. (Docs. 34, 45, 46, 62, 63, 73).

Accordingly:

1. The Report and Recommendation (Doc. 74) is **ADOPTED**;
2. Defendants' motion to dismiss the complaint (Doc. 51) is **GRANTED in part and DENIED in part**, as follows:
  - a. Defendants' motion to dismiss is GRANTED for failure to exhaust administrative remedies under 42 U.S.C. § 1997e as to Plaintiff's Eighth Amendment claim against Defendants Ley, Holley, and Berry and Plaintiff's First Amendment retaliation claim against Defendant Cherryholmes. Accordingly, these claims are DISMISSED without prejudice;
  - b. Defendants' motion to dismiss is GRANTED for failure to state a claim for relief as to Plaintiff's First Amendment retaliation claim against Defendant Bell. Accordingly, this claim against Defendant Bell is DISMISSED.
  - c. Defendants' motion to dismiss is DENIED as to Plaintiff's First Amendment retaliation claim against Defendants Berry and Saylor.

Additionally, the Court hereby ORDERS that Plaintiff shall have forty-five (45) days from the date of this Order to file a notice either apprising the Court of his new address or alternatively confirming his residence at the same address. Failure to file a notice, as hereby ordered, will result in the dismissal of Plaintiff's case for want of prosecution.

**IT IS SO ORDERED.**

Date: 3/15/19

s/ Timothy S. Black  
Timothy S. Black  
United States District Judge